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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,049	08/30/2001	Thomas J. Schall	019934-002510US	8353

20350 7590 04/15/2005

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EXAMINER

MOSHER, MARY

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 04/15/2005

22

Please find below and/or attached an Office communication concerning this application or proceeding.

**Supplemental
Notice of Allowability**

Application No.

09/944,049

Examiner

Mary E. Mosher, Ph.D.

Applicant(s)

SCHALL ET AL.

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☐ This communication is responsive to _____.
2. ☒ The allowed claim(s) is/are 111 and 113-145.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>20050225</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

E/
MM
4-13-05

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Romy Celli on March 15, 2005.

The application has been amended as follows:

Claim 112 has been cancelled, claim 111 has been amended, and new claims 144 and 145 have been added, as follows:

E1
~~111~~. A composition comprising (a) a replication competent attenuated cytomegalovirus (CMV) that can generate an immune response in a mammal, and (b) a pharmaceutically acceptable carrier, wherein the CMV is attenuated through inhibition of expression or activity of US28 and/or a US28 homolog and wherein said carrier comprises an adjuvant.

E2
~~33~~144 (new). A composition comprising (a) a replication competent attenuated human cytomegalovirus (HCMV) that can generate an immune response in a mammal, and (b) a pharmaceutically acceptable carrier, wherein the HCMV is attenuated through inhibition of expression or activity of UL78.

~~34~~145 (new). A composition comprising (a) a replication competent attenuated rhesus cytomegalovirus (rhCMV) that can generate an immune response in a mammal,

and (b) a pharmaceutically acceptable carrier, wherein the rhCMV is attenuated through inhibition of expression or activity of US28 and/or a US28 homolog.

The following is an examiner's statement of reasons for the amendments:


Contrary to the statements made in the original reasons for allowance, "A composition comprising....a pharmaceutically acceptable carrier" can be interpreted as reading on a composition comprising culture medium. Therefore the claims have been amended so that they either require an adjuvant, which is not present in the prior art compositions such as those taught by Beisser et al (1998), or require mutant viruses which are not taught in the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary E. Mosher, Ph.D. whose telephone number is 571-272-0906. The examiner can normally be reached on M-T and alternate F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

3/14/05


MARY E. MOSHER
PRIMARY EXAMINER
GROUP 1800-1600